IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-11-2006

CORAM :

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO

and

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 22158 of 2004

-o-

A. Dhinakaran
Orthotic-cum-Prosthetic Engineer
District Rehabilitation Centre
Chengalpet
Kancheepuram .. Petitioner

Versus

1. The State of Tamil Nadu
   rep. by the Secretary to
   Government
   Social Welfare & Nutritious Meal
   Programme Department
   Fort St. George
   Chennai - 600 009

2. The Secretary to Government
   Finance Department
   Fort St. George
   Chennai - 600 009

3. The Director of Social Welfare and
   Nutritious Meals Programme
   (now redesignated as the State
   Commissioner for Rehabilitation
   of the disabled)
   No.15/1, Modern School Road
   Thousand Lights
   Chennai - 600 006

4. The Union of India
   rep. by Project Director
   District Rehabilitation Centre Scheme
   Central Administrative & Co-ordination
   Unit
   Ministry of Welfare
   Government of India
   No.4, Vishnu Digambar Marg
   New Delhi - 2

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5. The Registrar
   Tamil Nadu Administrative Tribunal
   High Court Buildings
   Chennai - 600 104 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the fifth respondent Tribunal dated 21.01.2003 in O.A.No. 7968 of 1995, quash the same and consequently allow the said O.A. No. 7968 of 1995.

For Petitioner : Mr. K.V. Subramaniam, Sr. Counsel
for Mr. A.R. Emperumal

For Respondents : Mrs. Geetha
Additional Govt. Pleader for
RR1 to 3
Mr. S. Ramalingam for R4

ORDER

A. KULASEKARAN, J

Challenging the Order dated 21.01.2003 passed by the fifth Respondent/ Tribunal in O.A.No. 7968 of 1995, the present writ petition has been filed.

2. Brief facts of the case are as follows:-

The petitioner was appointed as Prosthetic technician, Grade II in the Medical Education Department, Government General Hospital, Madras in the year 1977. On 01.10.1986, he joined the District Rehabilitation Centre at Chengalpet, Tamil Nadu as Orthotic-cum-Prosthetic Engineer and served in the said capacity till he filed the writ petition. In the State of Tamil Nadu, there is only one post of Orthotic-cum-Prosthetic Engineer. There is only one diploma course in Engineering of the said discipline of Orthotic-cum-Prosthetic Engineer in Tamil Nadu, which is conducted by the Department of Technical Education in Tamil Nadu and there is no Engineering Degree in Orthotic-cum-Prosthetic Engineer in any of the Universities in India. There are 12 District Rehabilitation Centres in India, including the one at Chengalpet, Tamil Nadu, which are 100% funded by the Ministry of Social Welfare, Government of India, though the scheme is run as a State Government scheme. It is stated that the petitioner's basic pay scale was Rs.905-1545 and as per V Tamil Nadu Pay Commission, his revised pay scale was Rs.1400-2600 with effect from 01.06.1988. G.O. Ms. No. 666, Finance dated 27.06.1989 was issued by the Government of Tamil Nadu recommending Central Government scales of pay for almost all the categories of employees of the State Government, wherever category equalisation is possible. The qualification prescribed for the post of Orthotic-cum-Prosthetic Engineer in District Rehabilitation Centre at Chengalpet, Tamil Nadu in G.O. Ms. No.1293, Social Welfare Department dated 15.05.1986 was diploma from National Institute of Rehabilitation, Training and Research (NIRTAR) Cuttack, All India Institution of Physical Medicine, Bombay or any other equivalent

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qualification from recognised institute with 2 to 5 years experience. It is stated that the Government of India allowed the scale of Rs.2000-3500 for the post of Orthotic-cum-Prosthetic Engineer (Senior) and Rs.1400-2600 for Orthotic-cum-Prosthetic Engineer (Junior) with qualification of degree or diploma or any other equivalent qualification from a recognised institute and the gradation scale (Senior/Junior) is with reference to the requirement of experience at the time of first appointment to the post of Juniors – 2 years and Seniors – 5 years. It is further stated that the scale of pay allowed to the holders of the post with similar qualification in other District Rehabilitation Centres of other States is Rs.2200-50-2300-75-2900-90-3500-100-3950-120-4070 at Mysore in Karnataka. The scale of pay allowed in National Institute under the Government of India is also Rs.2000-4000. Thus, no distinction is made between diploma or degree holder. The Government of India permitted the state Governments to allow corresponding pay scale of the State Government for any post in the District Rehabilitation Centre and the entire expenditure on such salaries is fully reimbursed by the Government of India, hence, there is no financial commitment on the part of the State Government, if the pay scale of the petitioner is revised to Rs.2000-3500 irrespective of the fact whether the employee is possessing degree or diploma. The petitioner has sent a representation dated 30.09.1991 to the first respondent and also subsequent representation dated 01.09.1993 to which a reply dated 03.10.1994 was sent by the first respondent, wherein it is stated thus:-

> "2. The Fifth Pay Commission has provided the revised scale of pay of Rs.1400-2600 for the pre-revised scale of pay of Rs.905-1545 to the above post. Normally the diploma holders in the other departments are given the scale of pay of Rs.1350-2200 and Rs.1400-2600 only. Hence, the scale of pay provided by the Fifth Tamil Nadu Pay Commission is appropriate. As the incumbent holding the post of Orthotic-cum-Prosthetic Engineer is only, a diploma holder, there is no justification to revise the scale of pay further. Even though two scales of pay of Rs.2000-3500 to Degree holders as Grade I and Rs.1400-2600 for diploma holder as Grade II were provided, based on the recommendation of official Committee, the individual will not be affected because the scale of pay provided in the Fifth Pay Commission and for Grade II in the official committee recommendation are the same. Hence, your request to revise the pay scale as suggested above, cannot be complied with."

3. Challenging the said order dated 03.10.1994, the petitioner has filed O.A. No. 7968 of 1995 before the Tribunal, which was dismissed on 21.01.2003, hence, the present writ petition has been filed.

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4. The learned Senior counsel appearing for the petitioner submitted that the Tribunal failed to take note of the communication

dated 10.01.1991 issued by the fourth respondent suggesting the revised pay scale at Rs.2000-3500. The advertisement issued by the Mysore District Rehabilitation Centre inviting applications for the said post indicate the Scale of Pay as Rs.2200-4600. The first respondent has issued G.O. Ms. No.10 dated 21.01.1999 prescribing qualifications for the post of Orthotic-cum-Prosthetic Engineer as diploma or degree. The Tribunal failed to follow the Orders of the Central and State Government dated 10.01.1991 and 21.01.1999 respectively mentioned supra, which are passed after the V Pay Commission report dated 01.06.1988. The One-Man Committee recommendation mentioned in the Tribunal Order was not placed before it or copy of the same was furnished to the Petitioner. The findings of the Tribunal that the petitioner's counterpart possessing similar qualification have been given only lesser pay scale is incorrect. In fact, the other State Governments are strictly enforcing the guidelines issued by the Central Government and fixed scale of pay of Rs.2000-2200 or 2600. No separate counter has been filed by the Central Government. The comparision of the petitioner's post with the State Government employees having similar diploma is untenable. The One-Man Committee recommendations were issued without reference to the guidelines issued by the Ministry of Social Welfare, Government of India in its communication dated 10.01.1991. G.O. Ms. No.571 dated 01.08.1992, Finance Department, Government of Tamil Nadu was passed for revision of scale of pay for certain categories of Social Welfare Department in Government of Tamil Nadu. It is further submitted that 18 months prior to the issuance of G.O. Ms. No.571 dated 01.08.1992, the Social Welfare Department, Government of Tamil Nadu has received clear guidelines from the Ministry of Welfare, Government of India, New Delhi. In support of this contention, the learned Senior counsel relied on the decisions reported in (State of Mysore vs. B. Basavalingappa) AIR 1987 Supreme Court 411 and (P. Satita and others Vs. Union of India and Others) All India Service Law Journal 1985 (2) 331 and prayed for allowing the writ petition.

5. Mrs. Geetha, learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the entire expenses of salary list of the staff were reimbursed 100% by the Government of India in respect of the District Rehabilitation Programme upto 2004-2005. The Secretary, Ministry of Social Justice and Empowerment, Government of India, in its letter dated 19.04.2005 informed that the Government of India will not extend financial support to the said Centres beyond first quarter of 2005-2006. The fourth respondent, in its letter dated 17.01.2005 informed that the Government of India will not continue with the financial support to the Centres and requested the Rehabilitation Centres to seek funds from the respective State Government. There is no uniformity in adopting the pay scale among the District Rehabilitation Centres in the Country as each State Government adopted either Government of India's scale of pay or State Government's Scale of Pay as option to adopt scale of pay was left to the discretion of the respective State Governments. The Joint Secretary, Government of India in its letter dated 10.01.1991 suggested two pay scales, lower scale for the professionals with two years experience and higher scale for professionals having 5 years experience. In the said notification nomenclature of the post of Orthotic-cum-Prosthetic Engineer from

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the old pattern has been changed as Orthotic-cum-Prosthetic Engineer (Senior) in the new pattern which is the only difference. There is no difference in the recommended pay scale of Rs.2000-3500 in old pattern and new pattern. There is also no difference in the minimum qualification and method of recruitment prescribed. The State Governments were left with the option to fix the scale of pay considering the ground realities, vertical and horizontal relativity being maintained in the State. The classification of Grade I and Grade II for Degree and Diploma Holder is well within the purview of the State Government. The scale of pay suggested by the Central Government is not adopted not only in the case of Orthotic-cum-Prosthetic Engineer but also in other posts namely District Rehabilitation Officer, Social Worker, Audiologists/Speach Therapist etc., B.Sc., Degree in Orthotic-cum-Prosthetic Engineer is offered in All India Institute of Physical Medicine and Rehabilitation, Mumbai and also in Delhi University. The status of the employees in the District Rehabilitation Centre, Mysore is not the same as in Chengalpet, Tamil Nadu. The Staff of District Rehabilitation Centre, Chengalpet are awarded the status of State Government employees and provided with all service benefits, whereas, it is not so in Karnataka, hence, the same cannot be compared with. The learned Additional Government Pleader, by making the above said submission justified the order passed by the first respondent as well as the Tribunal and prayed for dismissal of the writ petition.

6. We have considered the argument of the counsel for both sides and perused the records.

7. The petitioner was appointed as Orthotic-cum-Prosthetic Engineer on 01.10.1986 and he claimed that he has rendered service as a Engineer, discharged duties as an expert and a person competent in medical and engineering section of Mobile Rehabilitation Centre and managed the staff attached to the workshop as being the Chief of the said Section. The Government of India, Ministry of Welfare issued letter dated 10.01.1991 and issued certain guidelines relating to staff structure, revised District Rehabilitation Centre Scheme, Suggested pay scale, minimum qualification, method of recruitment etc., The case of the petitioner is that in annexure IV of the said guidelines, it suggested pay scale for the post of Orthotic-cum-Prosthetic Engineer at Rs.2000-3500. The minimum qualification required was degree or diploma from National Institution of Rehabilitation, Training and Research, Cuttack; All India Institute of Physical Medicine, Bombay or any other equivalent qualification from recognised institute with five years experience. Based on the said guidelines, the petitioner has submitted a representation dated 30.09.1991 praying for fixing his scale of pay at Rs.2000-3500 on the ground that he had about 5 years of experience as Orthotic-cum-Prosthetic Engineer, but his pay scale was only Rs.1400-40-1600-2600, which was fixed as per the V Tamil Nadu Pay Commission G.O. Ms. No. 666 dated 28.06.1989; that the Government of Tamil Nadu passed G.O. Ms. No.571, Finance (Pay Cell) Department dated 01.08.1992 wrongly made two grades and re-fixed the pay scale and the same is mentioned in Sl. No.32 and 32-A of Column No.1 of the said G.O. as follows:-

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	column (1)	Column (2) Rs.	Column (3) Rs.
32.	Orthotic-cum-Prosthetic Engineer to be re-designated as Orthotic-cum-Prosthetic Engineer, Grade I (for Engineering Degree holder)	905-1545	2000-3500
32-A	Orthotic-cum-Prosthetic Engineer-Grade II (for others)	905-1545	1400-2600

8. On 01.09.1993, the petitioner submitted another representation to the first respondent stating that for the post of Senior Technician in District Rehabilitation Centre, the Scale of Pay was fixed at Rs.1320-2040 and Orthotic Technician under the Operation Polio Programme in that Department was fixed at the scale of pay at Rs.1300-2040; that the Status and responsibility of Orthotic-cum-Prosthetic Engineer are higher than the above two categories, whereas, the scale of pay revised by the V Tamil Nadu Pay Commission for the post of Orthotic-cum-Prosthetic Engineer is less when compared to the other two lower posts and that the official committee recommended the revised scale of pay of Orthotic-cum-Prosthetic Engineer. The said representation of the petitioner was rejected by the first respondent by order dated 03.10.1994 stating that V Pay Commission has provided the revision of scale of pay of Rs.1400-2600 for the pre-revised scale of pay of Rs.905-1545 to the post of Orthotic-cum-Prosthetic Engineer in the District Rehabilitation Centre at Chengalpet; that normally, Diploma holder in the other departments are given the Scale of pay of Rs.1350-2200 and Rs.1400-2600 only, hence, the scale of Pay provided by the V Pay Commission is appropriate; that the Petitioner is possessing a Diploma, hence, there is no justification to revise the scale of pay at Rs.2000-3500, which is eligible only to Engineering Degree hodlers as Grade I.

9. Challenging the said order dated 03.10.1994 of the first respondent, the petitioner has filed O.A.No. 7968 of 1995, which was dismissed by the Tribunal holding that though the Central Government recommended higher pay scale, fixation of salary was left to the option of the State Government; that the petitioner is a diploma holder in Orthotic-cum-Prosthetic Engineering; that the petitioner's pay was revised at Rs.1400-2600 by the V Tamil Nadu Pay Commission, which had the opportunity of recording evidence and hearing representation from individuals and associations; that the scale of pay for diploma holders in other engineering subjects in Highways and Public Works Department was revised and fixed at Rs.1350-2200. Considering the speciality of the post, held by the petitioner, higher scale of pay was fixed at Rs.1400-2600, hence, the petitioner is not entitled to Grade I pay, which could be given only to Engineering graduate. The plea of the petitioner that there is no University offering the Orthotic-cum-Prosthetic Engineering Degree is not a justification at all for granting higher scale to the petitioner. It is further mentioned in the Order of the Tribunal

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that the scale of pay for the post of Orthotic-cum-Prosthetic Engineer was studied by One-man committee, which recommended different scales of pay, higher pay scale for Engineer Grade-I and lesser pay scale for Grade-II. Grade-I scale can be extended only to persons holding Engineering Degree and Grade-II for those possessing Diploma.

10. The learned Senior counsel for the petitioner argued that the pay scale fixed by the State Government is not in accordance with the guidelines issued by the Government of India on 01.10.1991 and in any event the denial of higher pay scale by the first respondent in its order dated 03.10.1994 discriminating the petitioner as diploma holder is invalid.

11. The Central Government has issued guidelines in D.O. No.3-5(G)/89-DRC dated 10.01.1991 suggesting higher pay scale at Rs.2000-3500 for the post of Orthotic-cum-Prosthetic Engineer (Senior) and Rs.1400-2600 for the post of Orthotic-cum-Prosthetic Engineer (Junior) on the basis of experience of 5 years and 2 years respectively. It is stated in that communication that the pay scale indicated are only suggested pay scales and 'corresponding pay scales of the State Government may be given', thus, the Central Government left it to the option of the State Government to give corresponding pay scales of the State Government. The first respondent replied that the the pay scale has been fixed considering the ground realities and vertical and horizontal relativity being maintained in the State; that the Staff of the District Rehabilitation Centre, Chengalpet are awarded the status of State Government employees and provided with salaries and other benefits. The official committee had considered the ground realities in the State of Tamil Nadu in respect of scale of pay given to diploma holders in various other departments of the Government of Tamil Nadu.

12. Though the Central Government made 100% funding, so far as fixation of salary is concerned, left to the option of the State Government, hence, it is not mandatory to follow the suggested pay scales by the first respondent

13. In respect of the alleged discrimination on the ground of degree and diploma qualification, the learned Senior counsel for the petitioner relied on the (State of Mysore vs. B. Basavalingappa) AIR 1987 Supreme Court 411. It is relevant to mention here that the above said decision reported in AIR 1987 Supreme Court 411 was subsequently over ruled by the Honourable Supreme Court in their decision reported in (Madhya Pradesh Rural Agriculture Extension Officers Association vs. State of Madhya Pradesh) 2004 (4) SCC 646 holding that educational qualification as the basis for difference in pay scale is valid, wherein it is held in Para Nos. 20 & 23 thus:-

> "20. The aforementioned decisions are authorities for the proposition that despite the fact that the employees have been performing similar duties and functions and their posts are interchangeable, a valid classification can be made on the basis of their educational

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qualification. The observation of Krishna Iyer, J in V. Balasubramanyam (1980) 1 SCC 634 although is interesting but it appears that the fact of the matter involved therein did not warrant application of the said principle.

23. In B. Basavalingappa, a two-Judge Bench of this Court did not notice the earlier binding precedents of this Court. In fact, one of them, K.N. Singh, J., as the learned Chief Justice then was, was a party to the subsequent decision in Mewa Ram Kanojia. In that case no material was brought on record on the basis of which it could be contended that there was any substantial difference at that time between the two classifications although they were described differently. It was in that situation observed: (SCCpp.662-63,Para 6)

> "It was argued that a diploma is a higher qualification than a certificate. But neither there is any curriculum on record nor any other material to draw that inference. On the contrary this circumstance that at the time when respondent was recruited a diploma-holder or a certificate-holder both were entitled to be recruited as Instructors on the same pay scale indicates that in those days the two were considered to be alike."

In the said judgment, the facts were that the members of appellant association were originally appointed as Village level Workers, they were matriculates, subsequently their designation has been changed as Rural Agricultural Extension Officers, the State Government made pay revisions introducing two different scales of pay namely Rs.575-880 for non-graduates and Rs.635-950 for fresh recruitment and for existing B.Sc., B.Sc., (Agri) degree holders and the State issued an executive instruction directing that not only fresh recruits shall be entitled to pay scale of Rs.635-950 but also graduate officers working even prior to 01.12.1991 will be eligible therefor. By reason of an amendment in Rules made in terms of a notification dated 05.09.1984, the employees holding degree as also new recruits were to be placed in the same scale of pay. The question was whether afore-mentioned order of the State Government is discriminatory in nature or not. It was contended that the classification between two sets of employees, where posts were inter-changeable and who are carrying out the same work and undergone the same training could not have been placed in two different scales of pay only on the basis of educational qualification and educational qualification to be a valid criteria only where new cadre is created and where no minimum qualification was fixed at the time of initial appointment, but in a situation where the employees, irrespective of their qualification had been performing the same function in the same cadre, the doctrine of equal pay for equal work would be applicable. The Honourable

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Supreme Court held that despite the fact that the employees have been performing similar duties and function and their posts are inter-changeable, valid classification can be made on the basis of their educational qualification.

14. The learned Senior counsel for the petitioner also relied upon the decision reported in (P.Satita and others vs. Union of India and others) All India Service Law Journal 1985 (2) 331. In the said case, senior draughtsmen working in the same department, discharging same duties and works were divided into two groups and given different pay scales, the Honourable Supreme Court held it as violative of Article 14 of the Constitution of India on the ground that it was not a different grades created on the ground of higher qualification, either academic or otherwise or entitlement by any other criteria. The said Judgment is not applicable to the facts and circumstance of the case.

15. In the decision of the Honourable Supreme Court (U.P. State Sugar Corporation Limited and another vs. Sant Raj Singh and others) passed in S.L.P. (C) No. 18327 of 2004, in Para-16, it was held thus:-

> "16. Educational qualification was made the basis for a valid classification in the matter of payment of salary in a particular scale of pay by the Wage Board itself. Only in the year 1989, such a qualification was obliterated...
> ..We, therefore, cannot accept the contention of Shri Dwivedi that only because no such qualification was prescribed at the time of recruitment, the classification made on that basis would be bad in law.."

16. Following the said judgments of the Honourable Supreme Court, we hold that the classification made by the first respondent on the basis of degree and diploma is perfectly valid.

17. It is well settled that equation of posts and determination of pay scales is the primary function of the Executive and not for the Judiciary, but that is not to say that Court has no jurisdiction and the aggrieved employees have no remedy. If they are unjustly treated by the arbitrary action of the State or inaction, Court must interfere. In this case, the first respondent's stand is that the Central Government gave option to it to fix the pay scale, it considered several factors, vertical and horizontal relativity and decided not to follow the pay scales suggested by the Central Government; that in Karnataka, similar posts was not treated as State Government employees at all, hence, the same cannot be compared; that the pay scales suggested by the Central Government is not adopted not only in the case of Orthotic-cum-Prosthetic Engineer but also in other posts namely District Rehabilitation Centre Officer, Social Worker, Audiologists/ Speech Therapists etc., In this context, it is relevant to refer to the decision of the Honourable Supreme Court reported in (Secretary, Finance Department and others vs. West Bengal Registration Service Association and others) AIR 1992 Supreme Court 1203 wherein in Para-12, it was held thus:-

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> "12. ...There can, therefore, be no doubt that equation of posts and equation of salaries is a complex matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and Court's interference is absolutely necessary to undo the injustice."

18. The first respondent has stated that they have kept in view several factors while evolving the pay structure of the petitioner and also hierarchical arrangements, awarded him the status of State Government employee and provided other facilities and benefits to him, hence, the same not required to be interfered by this Court.

19. In the result, the orders passed by the first respondent dated 03.10.1994 and the Order of the Tribunal dated 21.01.2003 made in O.A. No. 7968 of 1995 are confirmed. The writ petition is dismissed. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to the Government
   Government of Tamil Nadu
   Social Welfare & Nutritious Meal
   Programme Department
   Fort St. George
   Chennai - 600 009

2. The Secretary to Government
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   Tamil Nadu Administrative Tribunal
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1 cc to the Government Pleader, sr. 54035
1 cc to Mr.A.R. Emperumal, Advocate, Sr. 54175

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